Translation

PATENT COOPERATION TREATY



PCT

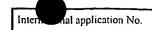
INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference IN 012-P/WO	FOR FURTHER A		cation of Transmittal of International Examination Report (Form PCT/IPEA/416)
International application No. PCT/CH2003/000616	1	late (day/month/year) 003 (12.09.2003)	Priority date (day/month/year) 13 September 2002 (13.09.2002)
International Patent Classification (IPC) or n A23L 1/0522	<u> </u>		<u> </u>
Applicant	INNO	GEL AG	
and is transmitted to the applicant ac 2. This REPORT consists of a total of This report is also accompani amended and are the basis for 70.16 and Section 607 of the These annexes consist of a total This report contains indications relat Basis of the report Priority III Non-establishment of IV Lack of unity of involved to the citations and explanated to the Certain documents of the Certain defects in the Certain defects in the contains and explanated to the contains and explanated to the certain defects in the certai	6 sheets ed by ANNEXES, i.e. r this report and/or she Administrative Instructal of 7 ring to the following ite of opinion with regard ention ander Article 35(2) with the supporting such	s, including this cover she is, sheets of the description ets containing rectifications under the PCT). sheets. ems: to novelty, inventive step the regard to novelty, inventive statement.	neet. In, claims and/or drawings which have been ions made before this Authority (see Rule p and industrial applicability
Date of submission of the demand		Date of completion of	this report
22 January 2004 (22.01.2004)		19 Ja	nuary 2005 (19.01.2005)
Name and mailing address of the IPEA/EP		Authorized officer	
Facsimile No.		Telephone No.	

Form PCT/IPEA/409 (cover sheet) (July 1998)





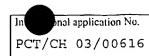
PCT/CH2003/000616

I. Basis	of the re	port	
1. With	regard to	the elements of the international application:*	
	the inter	mational application as originally filed	
\boxtimes	the desc	ription:	
	pages	1-4, 6-35	, as originally filed
	pages		, filed with the demand
	pages	5, 5a , filed with the letter of	03 December 2004 (03.12.2004)
\boxtimes	the clair	nç.	
الحت	pages	 -	, as originally filed
	pages	, as amended (togethe	
	pages		, filed with the demand
	pages _	1-16 , filed with the letter of	03 December 2004 (03.12.2004)
	the draw		
	pages		, as originally filed
	pages		
	pages	, filed with the letter of	·
t	he seauen	ce listing part of the description:	
Ш,	pages		and the United States
	pages _		
	pages	, filed with the letter of	
2. With the in	regard to ternationa	the language, all the elements marked above were available or furnished to the lapplication was filed, unless otherwise indicated under this item.	is Authority in the language in which
These	elements		which is:
	the lange	uage of a translation furnished for the purposes of international search (under Ro	ule 23.1(b)).
	the langi	page of publication of the international application (under Rule 48.3(b)).	
	the lang or 55.3).	uage of the translation furnished for the purposes of international preliminary	examination (under Rule 55.2 and/
3. With prelin	regard t ninary exa	o any nucleotide and/or amino acid sequence disclosed in the internation was carried out on the basis of the sequence listing:	tional application, the international
	containe	d in the international application in written form.	
	filed tog	ether with the international application in computer readable form.	
	furnished	d subsequently to this Authority in written form.	
	furnished	subsequently to this Authority in computer readable form.	
Ц	The stat	ement that the subsequently furnished written sequence listing does not onal application as filed has been furnished.	go beyond the disclosure in the
	The state	ement that the information recorded in computer readable form is identical nished.	to the written sequence listing has
ı. 🔲	The ame	ndments have resulted in the cancellation of:	
	∐ th	e description, pages	
		e claims, Nos.	
İ	th	e drawings, sheets/fig	
	This report beyond th	rt has been established as if (some of) the amendments had not been made, sin e disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**	nce they have been considered to go
* Replace in this and 70	report o	eets which have been furnished to the receiving Office in response to an invita is "originally filed" and are not annexed to this report since they do no	tion under Article 14 are referred to 1 contain amendments (Rule 70.16
	•	t sheet containing such amendments must be referred to under item 1 and annex	sed to this report.

١.	Basis of the report	
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1. This report has been drawn on the basis of (Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.): The valid claims 1 to 16 meet the requirements of PCT Article 34(2)(b). However, the phrase "after shaping" is missing from claim 14.

INTERNATION PRELIMINARY EXAMINATION REPORT



	Statement			
	Novelty (N)	Claims		YES
		Claims	1-16	NO NO
	Inventive step (IS)	Claims		YES
,		Claims	1-16	NO
	Industrial applicability (IA)	Claims	1-16	YES
		Claims		NO
	Citations and explanations			
	1. Reference	is made to th	e following documents:	
	D1: DE 10	0 22 095 A (CE	LANESE VENTURES GMBH)	22
	Novem	ber 2001 (2001	-11-22)	
	D2: US-A-	5 989 620 (WAN	G NING ET AL) 23 Novem	ber

1999 (1999-11-23)

- D4: FR-A-2 815 518 (NESTLE SA) 26 April 2002 (2002-04-26)
- D5: US-A-5 281 432 (PLUTCHOK GARY ET AL) 25 January 1994 (1994-01-25)
- D6: US-A-4 590 084 (BELL HARVEY ET AL) 20 May 1986 (1986-05-20)
- D7: US-A-5 451 423 (NOEL JEAN) 19 September 1995 (1995-09-19)
- D8: US-A-5 429 834 (ADDESSO KEVIN ET AL) 4 July 1995 (1995-07-04)
- D9: US-A-5 104 669 (WOLKE MARK ET AL) 14 April 1992 (1992-04-14).

2. PCT Articles 33(2) and (3)

The phase consisting of a starch network in part a) of claim 1 and the dispersed phase in part d) of claim 1 can be interpreted to be referring to the same phase. In that case, the matrix in part d), which consists of starch gel, is the actual food in part a).

Owing to the lack of clarity (PCT Article 6) of the newly introduced features, the scope of protection of the claimed subject matter has not changed.

Since:

- every gelatinizable starch can be considered
 "capable of crosslinking";
- the definitions "starch capable of cross-linking"

 (NS) and "available starch" (VS) overlap and hence the term "heterogeneous crystal" loses its significance, that is, becomes unclear (PCT Article 6); moreover, most starch grains can likewise be considered heterogeneous crystals because they generally contain amylose and amylopectin; and
- starch in heat-treated food such as bread and pasta, necessarily will have been in an at least partly amorphous state at least once, that is, the starch will at least once have been in a state in which the crystallization potential had largely been exhausted,

the claimed subject matter cannot be distinguished from a food containing cooked or partly cooked starch.

Document D1 discloses starch networks for use in food. Document D2 (example) discloses an extrusion of pasta at up to 135 $^{\circ}\text{C.}$ Document D3 discloses gluten-free pasta and a method of production based on a combination of gelatinized and non-gelatinized starch. Document D4 discloses gluten-free pasta made from modified gelatinized starch, natural starch and gluten-free flour. Document D5 (example 8) discloses pasta made from starch with a high amylose content and flour (wheat or maize) to increase cooking resistance. Document D6 (example) discloses the use of starch with a high amylose content for the production of pasta in tin cans. Document D7 (example 1) discloses cooked and extruded cereal products containing preheated flour. Document D8 (example 1) discloses reconstituted chips which in addition to a pregelatinized wax corn starch also contain another starch. Document D9 (example) discloses dough products which in addition to flour contain a starch with a high amylose and amylopectin content.

Consequently, the valid claim 1 is not novel (PCT Article 33(2)).

In addition, the starch-gel matrix in part d) and the starch network matrix in part a) can be interpreted to be one and the same, since a starch network cannot be distinguished from a starch gel. In this case, the claimed subject matter cannot be distinguished from a food containing partly cooked starch, that is, both cooked and uncooked starch.

Mutatis mutandis, the above also applies to the subject matter of claim 13. In addition, the subject matter of claim 13 does not define a method step but the result to be achieved (PCT Examination Guidelines, paragraph III-

4.7).

The dependent claims contain no features which, combined with the features of any claim to which they refer, meet the PCT requirements for novelty and inventive step.

As regards the wording of part b) of claim 1, wherein the products are characterized by a method for producing them, this is admissible only if the products themselves satisfy the requirements for patentability (PCT Examination Guidelines, paragraph III-4.7(b)).

Moreover, the parameters in claims 7 to 9 and 11 are unusual and hence no useful comparison can be drawn with respect to the prior art (PCT Examination Guidelines, paragraph III-4.7(a)).